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Attorneys for Respondent
RICHMOND DISTRICT NEIGHBORHOOD CENTER

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

RICHMOND DISTRICT
NEIGHBORHOOD CENTER

Case # 20-CA-091748

**REPLY TO OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

And

Hearing Scheduled for July 23, 2013

IAN CALLAGHAN, an individual

Immediate Relief Requested

The General Counsel's 2-page opposition contains no evidence whatsoever as required to deny Respondent's motion for summary judgment. Instead, the opposition merely claims there is a "factual dispute" since Respondent denied in its answer to Region 20's Complaint that the Claimant engaged in protected concerted activity. The General Counsel failed to submit any declarations or documents, failed to respond to Respondent's separate statement of undisputed material facts, and utterly ignored all of Respondent's voluminous evidence presented with its

moving papers showing there is no merit to this case.

It is a fundamental that in order to avoid summary judgment, the opposing party must affirmatively show a genuine dispute as to a material fact *and cannot merely rely upon its pleadings*. (See, e.g., Federal Rules of Civil Procedure 56(c).) Rather, the opposing party must make an *affirmative showing* on all matters placed in issue by the motion *as to which it has the burden of proof at trial*. (See, e.g., *Celotex Corp. v. Catrett* (1986) 477 U.S. 317, 322-323.)

Here, Region 20 has the burden on showing: (1) the Claimant engaged in protected concerted activity; and (2) that the Claimant's offer letter was rescinded because of his protected concerted activity. The General Counsel offers no evidence to support either prong. The General Counsel's sole reference to its own Complaint, and Respondent's denial of the allegations of protected concerted activity, cannot suffice to create a triable issue of fact.

In cases before the NLRB, summary judgment is appropriate in the absence of genuine issues of material fact requiring a hearing before the administrative law judgment. (See, e.g., *Teamsters Local Union No. 579* (Jones) 350 NLRB 87 (2007); *Marble Polishers Local 47-T* (Grazzini Bros.) 315 NLRB 520 (1994).) In both those cases, summary judgment was granted as there was no genuine issue of material fact.

Here, Respondent provided extensive evidence in its moving papers (in particular, the 6-page declaration of Jan Nicholas, and exhibits thereto) showing that Claimant was terminated solely because of his Facebook postings, which are not protected concerted activity. (See, e.g. Nicholas Dec. at Para. 12.) The Facebook postings (attached hereto) in and of themselves show they have nothing to do with protected concerted activity. The Advice Memorandums in *Wal-Mart*, Case No. 17-CA-25030 (July 19, 2011) and more recently in *Tasker Healthcare Group*,

d/b/a Skinsmart Dermatology, Case 04-CA-094222 (May 8, 2013) are squarely on point and mandate that is case be dismissed.

Claimant was terminated because he stated in his postings that he would not abide by Respondent's rules, he would have unauthorized field trips anytime he felt like it ("field trips all the time to wherever the fuck we want") and he would teach kids to graffiti up the place.¹ His postings also jeopardized Respondent's (a non-profit) contracts and funding, as set forth in the Declaration of Jan Nicholas. Imagine the liability exposure to Respondent if Mr. Callaghan had in fact taken youth for an unauthorized field trips and a minor was hurt or even killed. Respondent could potentially be exposed to punitive damages from being on notice of Mr. Callaghan's threats, yet continuing to allow him to be in charge of teens at the Beacon.

The opposition filed by the General Counsel, without any evidence whatsoever, is tantamount to no opposition. Section 102.24 of the Rules & Regulations provides "If the opposing party files no opposition or response, the Board may treat the motion as conceded and...summary judgment...if appropriate shall be entered."

Respondent respectfully requests immediate relief since this matter is set for a hearing on **July 23, 2013**, and Respondent (a non-profit entity providing after school care) has already been forced to expend enormous time and expense in defense of this matter which lacks merit.

¹Claimant's postings include statements that he will "be ordering shit, having crazy events at the Beacon all the time," "teach the kids to graffiti up the walls," "do some cool shit, and let them figure out the money," "Let's fuck it up," "all I wanna do is shit on my own. Have parties all year and not get the office people involved. Just do it and pretend they are not there," "fuck em. Field trips all the time to wherever the fuck we want."

This case should be dismissed.

Dated: July 10, 2013

Respectfully Submitted,


VOGL MEREDITH BURKE LLP

A handwritten signature in black ink, appearing to read "Michael S. Burke", with a long horizontal flourish extending to the right.

Michael S. Burke
Nicole L. Meredith



Kenya Duh

Aug 2 at 7:21pm near Oakland - 

U gOin baCk or nO??

 **Chloe Garabato** likes this.



Ian Callaghan

I'll be back, but only if you and I are going to be ordering shit, having crazy events at the Beacon all the time. I don't want to ask permission, I just want it to be LIVE. You down?

Aug 2 at 7:23pm



Kenya Duh

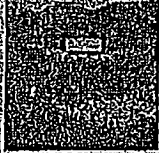
Im gOin to be a activity leader im not doin the t.c let them figure it out and when they start loosn kids (i aint helpn) HAHA

Aug 2 at 7:25pm




Ian Callaghan

EX I



Ian Callaghan

hahaha. Sweet, now you gonna be one of us. Let them do the numbers, and we'll take advantage, play music loud, get artists to come in and teach the kids how to grafitti up the walls and make it look cool, get some good food. I don't feel like bein their bitch and making it all happy-friendly-middle school campy. Let's do some cool shit, and let them figure out the money. No more Sean. Let's fuck it up. I would hate to be the person takin your old job.

Aug 2 at 7:29pm 



Kenya Duh

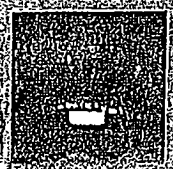
Im glad im done with that its to much and never appriciated sO we just gobe have fuN dOin activites and the best part is WE CAN LEAVE NOW hahaha I AINT GOBE NEVER BE THERE even thO shawn gone its still



hella stuck up ppl there that dont
appreciate nothing

Aug 2 at 7:52pm

Ian Callaghan



You right. They dont appreciate shit.

Thats why this year all I wanna do is

shit on my own. have parties all year

and not get the office people

involved. just do it and pretend they

are not there. I'm glad you arent

doing that job. let some office junkie

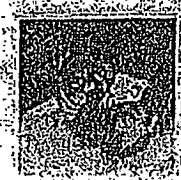
enter data into a computer. well make

the beacon pop this year with no

ones help.

Aug 2 at 7:40pm

Kenya Duh



They gone be mad cuz on

wednesday im goin there and tell

them my title is ACTIVITY LEADER

dont ask me nothing about the teen

center HAHA we gone have hella



clubs and take the kids ;)

Aug 2 at 7:45pm



Ian Callaghan

hahaha! fuck em. field trips all the time to wherever the fuck we want!

Aug 2 at 7:48pm 



Kenya Duh

U fUckn right see u wednesdaY

Aug 2 at 7:49pm



Ian Callaghan

I won't be there wednesday. I'm outta town. But I'll be back to raise hell wit ya. Dont worry. Whatever happens I got your back too.

Aug 2 at 7:56pm



Chloe Garabato

WTF !!! As soon as I leave you guys want to hella fun as shit and I can be there !! HELLA MEAN !!!



Aug 2 at 8:10pm



Kenya Duh

U can come why u cant

Aug 2 at 8:18pm 



Chloe Garabato

Because I'll have school . And I'm trying to work during school too . If you can get me job working with you guys , I'm there for sure !!!! Aha

Aug 2 at 8:22pm



Kenya Duh

You see what we gO thrU we there for the kids i dOnt knOW abOut everybOdy eLse

Aug 2 at 8:25pm



Ian Callaghan

It's all for the kids. You gotta come in and visit. Everyone is invited.

Aug 2 at 9:47pm

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RICHMOND DISTRICT NEIGHBORHOOD CENTER

RICHMOND DISTRICT
NEIGHBORHOOD CENTER

And

IAN CALLAGHAN, an individual

Case # 20-CA-091748

**PROOF OF SERVICE OF REPLY TO
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Hearing Scheduled for July 23, 2013

Immediate Relief Requested

PROOF OF SERVICE

I, the undersigned, declare that I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 456 Montgomery Street, 20th Floor, San Francisco, CA 94104 and business telephone number is (415) 398-0200.

On July 6, 2013, I served the parties in this action as follows:

- **REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
SUMMARY JUDGMENT**

xxxx by placing a true copy thereof enclosed in a sealed envelope via **Federal Express** overnight mail as set forth below.

Proof of Service of Reply to Opposition to Motion for Summary Judgment by RICHMOND
DISTRICT NEIGHBORHOOD CENTER [Case # 20-CA-091748]

Yasmin Macariola
Field Attorney
NLRB, San Francisco Office, Region 20
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San Francisco, CA 94103
Phone: (415) 356-5177
E-mail: yasmin.macariola@nrb.gov

Ian Callaghan
5716 Genoa Street
Oakland, CA 94608-2824

Kenya Moore
1407 Birchwood Court
San Francisco, CA 94134

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on July 6, 2013, at Orinda, California.



NICOLE MEREDITH

Senders Name Nicole Meredith Phone 510 501-5274
Company VOBL Meredith Burke, LLP
Address 456 Montgomery, 20th Fl
City San Francisco State CA ZIP 94104

2 Your Internal Billing Reference

3 To Recipient's Name Executive Secretary Phone
Company NLRB Board
Address 1099 14th Street NW
City Washington State DC ZIP 20570



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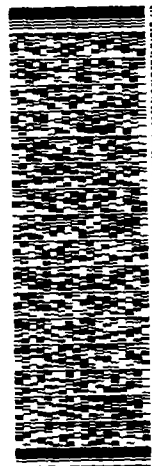
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